
In the
United States
Circuit Court of Appeals
For the Ninth Circuit

FARMERS AND MERCHANTS'
BANK, PHOENIX, as Intervener,
Appellant,

vs.

ARIZONA MUTUAL SAVINGS
AND LOAN ASSOCIATION and
ARIZONA TRUST COMPANY
and SIMS ELY, as Receiver for the
ARIZONA MUTUAL SAVINGS
AND LOAN ASSOCIATION and
ARIZONA TRUST COMPANY,
and the Intervening Petitioners Who
Were Allowed to Intervene in the
Cause Entitled CHARLES W.
CLARK, Complainant, vs. ARI-
ZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION and ARI-
ZONA TRUST COMPANY, De-
fendants, in the Court Below, by the
Decree of March 12, 1914.

Appellees.

NO. 2425.

MEMORANDUM

In behalf of Appellees, Interveners named in final
decree of February 27, 1913.

Filed

OCT 13 1914

F. D. Monckton,

WILLIAM M. SEABURY,
Solicitor for Appellees who are
Interveners named in the De-
cree of February 27, 1913.
Fleming Building,
Phoenix, Arizona.

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MEMORANDUM

In behalf of Appellees, Interveners named in final
decree of February 27, 1913.

This is an appeal by the Farmers & Merchants' Bank
of Phoenix, Arizona, from an order of the District

Court for the District of Arizona, dated March 12, 1914, denying its application for leave to intervene as to the surplus moneys in the case of Clark vs. The Arizona Mutual Savings and Loan Association and the Arizona Trust Company, which order dismissed the petitioners' bill in intervention, and also from the alleged decree entered in said cause upon the same day, which assumed to modify the final decree theretofore entered in said cause on February 27, 1913.

These appellees, who are all of the interveners named in the final decree of February 27, 1913, have been cited to appear upon this appeal and have appeared herein.

The only purpose for which these appellees appear is to disclaim any responsibility for the existence either of the order or alleged decree of March 12, 1914, from both of which this appeal is prosecuted.

It appears from the record before the Court that the appellant made no attack upon the validity of the decree of February 27, 1913. On the contrary, its application for leave to intervene in the cause and to participate only in the surplus moneys remaining after the liens established by that decree had been fully discharged, affirmed its validity.

The intervening petition, which was in the nature of a general creditor's bill, ancillary to the main proceeding, had for its further object and purpose the issue of process against the individuals named therein, to the end

that they might be required to account for their official misconduct as officers and directors of the insolvent companies here involved, and a restitution of many thousands of dollars to the receiver of these institutions might thereby be compelled.

The proceedings contemplated by the appellant's bill, if successful, would largely increase the fund upon which the interveners named in the decree of February 27, 1913, who are appellees herein, together with the other persons named in said decree, have a lien admittedly prior to that claimed by the appellant.

Consequently, these appellees did not oppose the appellant's application below and do not here oppose what appears to be the appellant's clear right to relief. These appellees sought to protect their interest in the preservation of the decree of February 27, 1913, by an application to this Court on May 4, 1914, for an order directing the learned Court below to show cause why a mandamus should not issue to induce the Court below to vacate the alleged decree of March 12, 1914, and to expunge it from the records as a nullity, because it assumed to modify and in effect to annul the final decree of February 27, 1913, long after the expiration of the term at which this latter decree was entered.

The order issued May 21, 1914, and is now returnable before this Court October 13, 1914, and still remains undetermined.

These appellees still rely exclusively upon their proceeding by mandamus for the protection of their rights in the premises.

They have prosecuted no appeal from the alleged decree of March 12, 1914, nor from the order of the same date which is brought here for review by appellant.

Counsel for these appellees has deemed it his duty simply to appear and disclaim responsibility for the errors committed below as evidenced by the order appealed from and by the alleged decree of March 12, 1914, to the end that upon a reversal thereof the costs of this appeal may not be imposed upon these appellees, who are in no way responsible for the commission of the errors complained of.

These appellees respectfully pray that they be discharged hence without costs as against them.

Respectfully submitted,

WILLIAM M. SEABURY.

Solicitor for Appellees who are
Intervenors named in the De-
cree of February 27, 1913.

Fleming Building,
Phoenix, Arizona.

San Francisco, October 14, 1914.